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OFFICE OF THE DIRECTOR  
TC 3600

November 8, 2004

In re Application of:  
William C. BASFORD  
Application No. 09/877,585  
Filed: December 19, 2002

:  
: DECISION ON PETITION  
: UNDER 37 CFR 1.181

This is in response to the petition filed on November 25, 2003 under 37 CFR 1.181 requesting reconsideration, and in the alternative, the withdrawal of the finality of the Office action mailed May 27, 2003 as being premature.

Applicant alleges that the Final Office action mailed May 27, 2003 was both premature and based upon unsound considerations. Applicant further argues that he has not received an adequate examination of the invention because the examiner failed to appreciate the technology described and claimed in the instant application.

A review of the record reveals that an amendment after final was received on July 30, 2003 in response to the Final Office action. An Advisory action was mailed on August 26, 2003 and re-mailed on October 17, 2003 to a corrected address. Because the amendment after final was filed within 2 months of the date of the Final Office action, the extension period runs from the Advisory action date of October 17, 2003.

A Notice of Appeal was filed along with the above Petition on November 25, 2003. However, a Notice of Abandonment was mailed on March 22, 2004 for failing to provide a timely response within the extension period that should have been given in the Advisory action.

Applicant did not file an extension of time in order to extend the period of response from the date of the Advisory action dated October 17, 2003. Therefore, the Notice of Appeal is untimely.

With respect the petition filed November 25, 2003, it is noted that MPEP specifically states "Any question as to prematurity of a final rejection should be raised, if at all, while the application is still pending before the primary examiner." [Emphasis added] See MPEP 706.07 (c). Furthermore 37 C.F.R. 1.181 (f) states, "the mere filing of a petition will not stay any period for reply that may be running against the application" and "[a]ny petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely...[t]his two-month is not extendable." [Emphasis added].

Therefore, the Petition is moot since it was filed untimely as the Application was abandoned as of the date of the Advisory action mailed October 17, 2003.

It is noted that a Petition to Revive under 37 C.F.R. 1.137 (a) or, in the alternative, 37 C.F.R. 1.137 (b) was received on April 6, 2004. Upon the mailing of this decision, the application will be forwarded to the Office of Petitions for consideration of the Petition to Revive.

The petition is DISMISSED.

Telephone inquiries should be directed to D. Glenn Dayoan, Supervisory Patent Examiner, at (703) 308-3102.



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